IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

WP(C).No. 26575 of 2007(L)

PETITIONERS:

1. **K.N. SHEREEF, AGED 52 YEARS, S/O. LATE M.NOOHUKANNU, JAS COTTAGE, KAIMANAM, PAPPANAMCODE P.O., THIRUVANANTHAPURAM,PIN-695 018.**
2. **K.A. ASHRAF, AGED 48 YEARS, S/O. LATE M.NOOHUKANNU, TOUCHSTONE MANOR, MATHRUBHOOMI ROAD, VANCHIYOOR, THIRUVANANTHAPURAM, PIN-695 035.**
3. **M. NAZEEMA, AGED 44 YEARS, D/O. LATE M. NOOHUKANNU, SHARO MANZIL, NEAR PUTHENTHERY PALLY, KAYAMKULAM.**
4. **K.N. SAJITH, AGED 36 YEARS, S/O. LATE M. NOOHUKANNU, TC 51/60, JAS COTTAGE, KAIMANAM, PAPPANAMCODE P.O., THIRUVANANTHAPURAM, PIN-695 018.**

BY ADV. SRI.MATHEWS V.JACOB (PARAVUR)
SRI.N.T.NANDAKUMAR (PARAVUR)

RESPONDENTS:

1. **THE AUTHORISED OFFICER, UNION BANK OF INDIA, P.B.NO.307, M.G.ROAD, STATUE, THIRUVANANTHAPURAM-695001.**
2. **UNION BANK OF INDIA, CHALAI BAZAR BRANCH, THIRUVANANTHAPURAM, REPRESENTED BY ITS CHIEF MANAGER.**
3. **REJI MATHEW, OONNUKALLAM THOTTIYIL HOUSE, KATTACHIRA, ETTUMANOOR, KOTTAYAM, PIN-686572.**

BY ADV. SRI.A.S.P.KURUP, SC, UBI
SMT.T.D.RAJALAKSHMI
SRI.E.R.VENKATESWARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON 30/10/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 26575 OF 2007 L
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Dated this the 30th October, 2007

J U D G M E N T

The petitioners seek to quash the sale of the property owned by their deceased mother and also Ext. P4 notice. There is a further prayer to direct the respondents to re-auction the property in compliance with the procedure established by law.

2. The petitioners' mother late Mariyam Beevi was a guarantor for the two loans availed of by the two partnership firms, namely, M/s. Jyothis and M/s. Associated Enterprises. When default was committed in repaying the amount to the 2nd respondent bank, proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the properties mortgaged by the deceased mother of the petitioners. It is stated that when notice of sale of the property was published, a compromise was arrived at between the parties on 10-3-2006 and as a result thereof the bids

received in response to Ext. P2 notice of sale were withdrawn by the bidders. According to the petitioners they were continuing efforts to raise necessary amounts and pay it to the bank and while so to, their shock and dismay, they received Ext. P3 to the effect that the sale of the mortgaged property was concluded in favour of the 3rd respondent. Thereafter Ext. P4 notice was issued to their mother requiring her to vacate and thereupon she filed litigations before this Court as also before the Debt Recovery Tribunal (DRT) which resulted in its dismissal. It is thereafter that this writ petition has been filed by the legal representatives of the guarantor challenging the sale of the mortgaged properties and also Ext. P4 notice. Counsel for the petitioners submits that the petitioner when sale was adjourned following a compromise between the parties, a subsequent sale could not have been effected by the respondent Bank without taking fresh proceedings for that purpose. It is on that ground the petitioner seeks to quash the sale.

3. The 2nd respondent Bank and also the 3rd respondent, the purchaser of the property, have filed

their statements. It is stated by the Bank that the petitioners' mother was a guarantor for certain loans and that the account became Non-Performing Asset (NPA) and hence proceedings were initiated under the Act. It is stated that notices were issued under Section 13(2) and 13(4) and the Bank had taken possession of the property on 15-2-2006 and invited Ext. P2 tender notice for sale of the property. According to the Bank the mother of the petitioners had filed W.P.(C) No. 23447 of 2006 to quash the proceedings in which, this Court granted her time to file appeal before the DRT and thereafter S.A. No. 6 of 2007 was filed before the DRT, withdrawing the writ petition.

4. It is stated that the bids received in response to the tender notice were scheduled to be opened on 23-4-2006 in the presence of the tenderers. The petitioners along with another person who were partners of the firms approached them and submitted Ext. R1(a) proposal for settling the liability. The Bank would state that though the Bank had postponed the opening of the bids. As the petitioners they did not honour the terms of the compromise proposed by them they had

opened the bid and that it was on account of this that the sale was confirmed. It is stated that the purchaser has also paid the money to the Bank and the Bank issued the sale letter as well. Thereafter, the purchaser had filed W.P.(C) No. 27966/06 which was disposed of by Ext. R1(b) judgment directing that the Bank is bound to take effective steps to evict the petitioners' mother to put the purchaser in possession. At that stage petitioners' mother filed W.P.(C)No.4910/07 challenging the interim order passed in S.A. No. 6/07. In that case, this Court issued a direction that the auction purchaser shall be put in possession of the property and Ext.R1(c) is the judgment. It is stated that thereafter S.A. No.6 of 2007 filed by the deceased was also dismissed by the Tribunal. As in the meanwhile the purchaser, even after having complied with the conditions of sale was not put in possession, had filed Contempt of Court Case No. 972/07 which was closed as per Ext. R1(d) judgment. In the meantime the Bank proceeded to obtain order of the District Collector under Section 14 of the Act. Even at that stage complaining of disobedience of the judgment of this

Court, the purchaser filed C.O.C No. 1250/07 and that case now stands posted for the statement of the Bank. In substance what the Bank would argue is that the issue canvassed by the petitioner regarding the correctness or otherwise of the proceedings initiated by the Bank stands concluded by virtue of the earlier judgments of this Court. According to the Bank contentions stated including the one relating to the invalidity of the sale in favour of the 3rd respondent have already been considered by this Court and therefore, it is not open to the petitioners to agitate this issue once again.

5. The 3rd respondent also would support the contentions of the Bank. It is stated that the 3rd respondent having been successful in a public auction and also having paid the amount, is entitled to be put in possession of the property.

6. Having considered the submissions on either side I am inclined to accept the contention of the respondents. This is a case where proceedings were initiated under the Act which was fought by the guarantor at every stage both before this Court and

before the Tribunal. The Tribunal having accepted the validity of the proceedings initiated by the Bank, those issues cannot be gone into by this Court. The argument raised was only regarding the correctness of the procedure adopted by the Bank in accepting the offer of the 3rd respondent. It is true that on account of the compromise that was proposed by the petitioners the Bank had deferred the sale. It is also true that subsequently when the compromise failed the Bank had confirmed the sale in favour of the 3rd respondent. In the statement filed by the Bank it has been stated that as a result of the failure of the compromise the Bank had issued notice to the 3rd respondent and the tender was opened in the presence of his authorised representatives and sale was confirmed for Rs.16 lakhs which has been paid by the purchaser. In my view this was the only option that was available with the Bank at that stage of the proceedings. The Bank had got a successful purchaser at a time when the petitioners were trying to delay the proceedings.

7. In any case the guarantor herself had unsuccessfully filed various proceedings and it is not

open to the petitioners to take up the very same issues at this distance of time. If I entertain this writ petition, I will be defeating the very purpose of the Act which has been enacted with the laudable object of speedy recovery of dues to financial institutions. I do not find any merit in the writ petition. This writ petition is dismissed, but without any order as to costs.

ANTONY DOMINIC
JUDGE

jan/-